IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.506 OF 2003

M/s.Rama Enterprises .. Appellant.
V/s.
Income-tax Officer, Ward-12(3)(2), Mumbai & Another .. Respondents.

Mr.J.D. Mistry with Mr.A.K. Jasani for the appellant.

CORAM : R.M. LODHA, &
J.P. DEVADHAR, JJ.

DATED : 3RD NOVEMBER, 2004.

P.C. :

Heard Mr.J.D. Mistry, the learned counsel for the appellant - assessee.

2. The Tribunal in the impugned order observed thus :

> ". We have heard the rival submissions and perused the material available on record. The assessee's case has to be looked into with all its attending facts and circumstances, which undisputedly spell out that it is a convenient arrangement made by the assessee with its associated concerns. We find merit in the argument of the learned departmental representative that the plea of consistency cannot be applied to assessee's case as every year is a distinct and separate unit of assessment and the principles of res judicata are not applicable to income-tax proceedings. In common parlance, letting out of any building with electrical fittings to outsiders will be treated as income from house property. The assessee has offered

> some fringe benefit without any basis of rent and quantum of facilities to its associated concerns. This type of arrangement can be viewed from the angle that these associated concerns wanted to avail certain common facilities and made an arrangement with the landlord (another associate concern) to provide the same alongwith the most prominent aspect of letting out the building. Such type of arrangement is of common feature. In a place like Nariman Point, any day, it will be the building which will be the centre of attraction and not the facilities. Looking at the peculiar circumstances, the facts and the relationship of the assessee with the associated concerns, we are of the view that the lower authorities were justified in assessing the income under the head 'income from house property'. This finding of the AO as well as the CIT(A) is, therefore, upheld. Ground No.1 of the assessee fails."

3. The assessee seeks to contend that the arrangement of providing the premises, the services and facilities at its building Raheja Chambers is the composite activity and income therefrom has to be assessed as profits and gains of business and not the income under the head 'income from house property'.

4. What appears to have been established on facts is that assessee let out the premises for compensation to the associated concerns and while doing so provided for services and facilities. On the facts found the Tribunal cannot be said to have erred in holding that these services are not sufficient to make out business venture.

5. The learned counsel for the appellant relied upon the judgment of the Supreme Court in the case of Commissioner of Income Tax, Bombay City I V/s. National Storage Pvt. Ltd. [66 ITR 596] and the judgment of this Court in the case of Commissioner of Income Tax, Bombay City-I V/s. Associated Building Co. Ltd. [137 ITR 339].

6. In so far as National Storage Pvt.Ltd. is concerned, on the facts found the Supreme Court held that the assessee was in occupation of all the premises for the purpose of its own concern, the concern being the hiring out of specially built vaults and providing special services to the licencees. In this background it was held that income was to be computed under Section 10 of the Income Tax Act, 1922 and not under Section 9. The facts in the present case are entirely different.

7. As regards Associated Buildings relied upon by the learned counsel for the assessee suffice it to say that the facts therein were entirely different. The facts are adequately summarised in the head-note of the report which read thus :

". The assessee-company owned a building, which was constructed in 1920, and had let out the same to different persons as office accommodation. I 1949, the assessee air-conditioned the whole building and also constructed an auditorium in the basement of the building at a considerable cost and provided services therein like the use of a film projector, a tape-recorded, a microphone, a canteen and so on. The assessee employed staff, including technicians, for the maintenance of the air-conditioning plant, the auditorium, the machinery therein and for servicing the machinery. The assessee charged the tenants separately for air-conditioning. The auditorium was also given for use to the public on rent. Till the assessment year 1964-65 the assessee showed in its return the income from the auditorium and air-conditioning services as income under the head "other sources". In the assessment years 1965-66 and 1966-67 the assessee claimed that the income from the two sources, namely, from the supply of cool air from the air-conditioning unit and the use of auditorium and other services was income from business. The ITO rejected the claim of the assessee and held that the income was income from "other sources" and not from "business". The AAC confirmed the order of the ITO. On further appeal, the Tribunal held that the object of the assessee in providing the facilities and services was to carry on a business activity and earn income, that the source of the income which the assessee obtained from the supply of the services was not an ownership of a house property but a business activity which was carried on, namely, the provision of the services of air-conditioning and of a fully equipped auditorium, that the letting out was not of a bare property but of one of a complex nature which consisted of providing specialised services and facilities, that the receipts of the assessee from the air-conditioning plant and the auditorium were from an activity

> carried on by the assessee which was in the nature of a business activity, that neither the auditorium nor the air-conditioning plant was let out as such and they were run by the assessee as and by way of providing services, and, therefore, allowed the appeal preferred by the assessee."

8. In the backdrop of the aforesaid facts in Associated Buildings, on reference made to the High Court, the High Court observed thus :

> ". It is in the light of the principles laid down in the aforesaid decisions that we have to resolve the controversy raised before us. We have already stated the facts earlier. It is important to recapitulate that the building in question was constructed as early as in 1920 and was let out at that time. The air-conditioning plant was put up and the auditorium constructed several years later, in 1949. The maintenance of the air-conditioning plant requires the service of a sizable staff, some of whom would have to be specialised in the work of maintaining an air-conditioning plant. Similarly, along with the auditorium, which was constructed, additional services have been provided like the use of a film-projector, tape-recorded, microphone and so on. A canteen is also being run. Running of all these activities would necessarily involve the maintenance of a staff and close supervision. The object of these activities is to earn income. These services or facilities, namely, the use of the air conditioning plant, the use of the auditorium along with the equipment and the use of the canteen are all of a complex nature and the supply of these services can, in no sense, be regarded as a mere better exploitation of the property, namely the said building. In these circumstances, it appears to us that

> the Tribunal was, with respect, justified in holding that the carrying on of all these activities amounted to a carrying on of business and the income derived from the same was business income as claimed by the assessee."

9. The judgment of this Court in the case of Associated Buildings has no application in the facts of the present case.

10. No substantial question of law arises in this appeal. The appeal is dismissed in limine.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)